

## DIRECTOR OF PUBLIC PROSECUTIONS, TASMANIA

### ANNUAL REPORT 2003 - 2004

This report is prepared for submission to the Attorney-General in accordance with the requirements of Section 15 of the *Director of Public Prosecutions Act 1973*, to report on the performance of my functions during the 12 months ending on 30 June in each year.

During the year staff in my Office have undertaken the prosecution of all criminal trials, pleas of guilty and breaches of suspended sentences or conditional discharges in the Supreme Court, the conduct of appeals in the Court of Criminal Appeal and Lower Court appeals, and all civil litigation on behalf of the State of Tasmania. The Office has also provided representation and advice to Agencies and Departments involved in prosecutions and proceedings in Courts of Petty Sessions and Tribunals and representation, where appropriate, for officers of Courts or Tribunals who become the subject of applications for review.

I have now been in this appointment for five years. In that time there have been significant pressures put on the Office, which statistics clearly demonstrate. In the five years from 1994-95 to 1998-99 the average number of persons tried was 50.2 per year. In the last five years (1999-00 to 2003-04) the average has been 115.4 per year. As I have previously reported, in recent times the nature of trials has become more complex and they are no longer simple contests of who said what in the Police station. Fuller investigations, more scientific evidence and more witnesses, especially more civilian witnesses, are now involved.

As well as the significant increase in persons tried there has been a corresponding increase also in persons presented, pleas of guilty, bail applications and appeals. It is a remarkable achievement that the prosecutors, clerks and administrative staff of this Office have been able to absorb this increase, while maintaining exceptional standards, despite their numbers having been virtually static throughout the

period. (Welcomely, at last, additional funding for the next two years will allow the employment of three new prosecutors.)

It should not be forgotten that “persons presented” are not just numbers. They are people charged with the most serious crimes – murder, rape, large-scale theft and fraud, arson, large-scale drug and fisheries crimes and major violence. The cases are conducted in the Supreme Court before Judge and jury, often against considerably resourced and experienced counsel. The laws involved are difficult and complex. The responsibility undertaken by prosecutors and the specialised skills required of them are of the highest order. They work long hours without overtime and are required to be away from home, on circuit, regularly. Their work is performed in public and prominently reported.

It is disappointing that the prosecutors receive little, if any, recognition or support from Government. Their work is vital to the maintenance of law and order and the enhancement of community safety and deserves to be recognised as such.

#### **CRIMINAL CASES IN THE SUPREME COURT**

During this year a total of 567 persons were presented for trial, plea or discharge in the Supreme Court (see Table 1). This represents a decrease over the previous year (616 people) but still a considerable increase over the two years prior (462 and 445).

The number of persons whose cases were pending at the end of the period rose from 203 last year to 245 this year. The table below gives the breakdown according to regions. I predicted in my last report that this would occur.

<b>Area</b>	<b>1999-00</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>
Hobart	63	78	137	82	122
Launceston	74	42	75	66	77
Burnie	39	41	52	55	46

The relative constancy in the backlog of cases is largely a function of available judicial time, which this Office can only seek to use as efficiently as it can be used, consistent with the interests of justice and a steady flow of new defendants committed by the Magistrates Court. The continued willingness of the Tasmanian defence bar to confine trials to the serious matters in issue is of great assistance to the efficient and just resolution of criminal matters.

Table 2 shows the major groupings of crime by persons convicted (i.e. pleas of guilty and trial). While dishonesty and personal violence still account for more than half the total, the proportion of sex crimes dealt with continue to show an increase on the previous year, and a significant increase over previous years. This trend appears likely to continue, and a dedicated team within the Office has been formed to oversight and prosecute the majority of these cases, although it is not expected that they will exclusively appear in sex cases nor that sex cases will exclusively be done by them. Continued education and training for prosecutors in this difficult and sensitive area will be given, and I am examining, with Police, avenues for further training in the interviewing of child witnesses.

#### **SUMMARY PROSECUTIONS AND LOWER COURT APPEALS**

This work has increased lately, possibly as Agencies become better resourced and aware that regulatory obligations bring investigative and, from that, prosecuting obligations. A total of 173 new files were opened this year in a variety of matters including workplace safety, fisheries, education matters, electoral matters and media prosecutions for breach of enactments prohibiting certain publications. Lower court appeals have become more numerous.

#### **CIVIL LITIGATION**

The civil litigation section provides legal representation to the State and its Agencies in the litigation in which it is involved. Statistics are shown in Tables 4 and 5.

The volume and nature of the litigation handled “in house” comes at an extraordinary low cost to the State, a point I expect to be demonstrated in the final costing of an action, the management of which because of its size had to be “outsourced” by agreement between the Agency involved and myself.

Changes to workers’ compensation and common law have seen a slight decrease in civil litigation against the State but I believe that will be made up by the expansion in administrative law litigation.

**(Timothy J Ellis SC)**  
**DIRECTOR OF PUBLIC PROSECUTIONS**

**TABLE 1**

**CRIMINAL PROSECUTIONS**

<b>Year</b>	<b>Persons Presented</b>	<b>Persons Convicted</b>	<b>Persons Acquitted</b>	<b>Persons Discharged</b>
1994-95	327	249	9	69
1995-96	324	255	14	55
1996-97	309	240	20	39
1997-98	335	262	24	49
1998-99	505	401	23(1) <sup>1</sup>	80
1999-00	711	562	45 <sup>2</sup>	103
2000-01	445	333	68 <sup>3</sup>	79 <sup>4</sup>
2001-02	462	319	32	111
2002-03	616	446	38	132
2003-04	567	390	43	134

<sup>1</sup> 1 person found unfit to plead

<sup>2</sup> 1 person found not guilty by reason of insanity & 1 person whose jury failed to reach a verdict

<sup>3</sup> 1 person found not guilty by reason of insanity & 3 persons to be retried

<sup>4</sup> 1 person deceased before trial

**TABLE 2****CRIME (TYPE) MAJOR GROUPINGS BY PERSONS CONVICTED**

<b>Crime (Type)</b>	<b>2001-02 %</b>	<b>2002-03 %</b>	<b>2003-04 %</b>
Dishonesty (aggravated/armed robbery, stealing, burglary, receiving, fraud, etc.)	44.20	35.42	39.24
Personal violence (murder, manslaughter, assault, wounding, grievous bodily harm)	30.09	28.25	23.30
Arson & injury to property	5.32	8.30	8.86
Sex crimes (rape, unlawful sexual intercourse/relationship, indecency)	5.64	11.66	13.17
Perjury & perverting the course of justice	4.70	3.13	6.07
Drugs	4.70	7.17	6.07
Other ungrouped (includes causing death by dangerous driving, conspiracy, escape)	5.35	6.07	3.29

**TABLE 3****COMPARATIVE TABLE RELATING TO THE DISPOSAL OF CRIMINAL MATTERS**

<b>Year</b>	<b>No. of Persons Presented</b>	<b>Pleas of Guilty</b>	<b>Dealt with other than as Plea</b>	<b>No. of Persons Tried</b>
1994-95	327	218	69	40
1995-96	324	222	55	47
1996-97	309	214	39	56
1997-98	335	234	49	52
1998-99	505	368	80	56
1999-00	711	488	104	119
2000-01	445	260	79	106
2001-02	462	244	111	107
2002-03	616	357	132	127
2003-04	567	315	134	118

Of those persons tried -

<b>Year</b>	<b>Convictions</b>	<b>Acquittals</b>	<b>Found Insane</b>	<b>Retrials</b>
1994-95	31	9	0	3
1995-96	33	14	0	4
1996-97	36	20	0	1
1997-98	28	24	0	0
1998-99	33	23	0	1
1999-00	74	43	1	1
2000-01	73	29	1	3
2001-02	75	32	0	0
2002-03	89	38	0	0
2003-04	75	43	0	0

**TABLE 4****CATEGORIES OF CIVIL MATTERS OPENED (BY %)**

<b>Category</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>
Employment (Workers Compensation & Crown Law)	56	57	54	54.8
Miscellaneous (incl. occupier liability and industrial)	24	24	24.2	31
Medical Malpractice	13	12	14.3	8.7
Debt Recovery	5	5	5.2	2.6
Housing	2	2	1.6	0.3
Anti-Discrimination			1.2	2.6

**TABLE 5****NUMBER OF CIVIL MATTERS**

<b>Year</b>	<b>New files opened</b>	<b>Files closed</b>	<b>Active files *</b>
2000-01	340	347	855
2001-02	350	340	946
2002-03	315	429	848
2003-04	310	283	935

\* This represents total files open as at end of financial year. By reason of the manner in which data is stored and retrieved it includes files which have previously been closed and re-opened.